

MAINE REVENUE SERVICES
(FORMERLY BUREAU OF TAXATION)
SALES/EXCISE TAX DIVISION
RULE NO. 323

COMMERCIAL AGRICULTURAL PRODUCTION AND COMMERCIAL FISHING

SUMMARY: Interprets Section 2013 of the Sales and Use Tax Law as it pertains to refunds and exemption certificates for persons engaged in commercial agricultural production and commercial fishing.

.01 Definitions.

A. Commercial agricultural production. "Commercial agricultural production" does not include:

- a) subsistence farming;
- b) the raising or breeding of animals when conducted as a hobby or avocation rather than as a commercial venture;
- c) tree farming, except fruit bearing trees, or forestry operations of any sort;
- d) the growing of non-edible crops such as seedlings, shrubs, vines, trees etc., except those that ultimately and primarily produce a product for human and animal consumption;
- e) the severance of sand, gravel, loam or peat moss even when such activities are in support of commercial agricultural production;
- f) the clearing of land; and
- g) preparation or packaging for market of agricultural products by a broker or processor who did not grow or raise the agricultural production;

B. Commercial fishing. "Commercial fishing" does not include:

- a) preparation or packaging of fish or other marine organisms by a broker or processor who did not catch the fish or other marine organisms;
- b) the harvesting of seaweed or other marine plants; and
- c) lobster pounds.

C. Depreciable. "Depreciable" means property that has a normal life expectancy of more than one year and is depreciable for Federal Income Tax purposes.

D. Depreciable machinery and equipment. "Depreciable machinery and equipment" does not include:

- a) trailers or attachments for motor vehicles such as bulk bodies and fertilizer bodies;
- b) snowmobiles and all-terrain vehicles;
- c) items which are affixed to or incorporated into real property, such as fencing, silos, storage buildings, special purposed building, heating or ventilation systems and construction materials; and
- d) supply items, other than repair parts.

E. Directly. "Directly" means those activities or operations which constitute an integral and essential part of commercial agricultural production or commercial fishing as distinguished from those activities or operations which are simply incidental, convenient or remote to commercial agricultural production or commercial fishing. "Directly" does not include support operations such as construction or repair facilities, machine shops, storage activities, administration or any highway transportation.

F. Primarily. "Primarily" means more than 50% of the time.

G. Production of livestock. "Production of livestock" does not include the raising or breeding of dogs, cats, or other pets, fur animals, game animals, game birds or fish.

.02 Exemption Certificates

A. Application. Any person claiming exemption under 36 M.R.S.A. Section 2013, sub-section 3 must apply to the State Tax Assessor for a Certificate of Exemption, on a form prescribed by the State Tax Assessor.

B. Evidence required. Evidence required by the State Tax Assessor shall include a copy of that portion of the person's most recent filing under the United States Internal Revenue Code which indicates that the person is engaged in commercial agricultural production or commercial fishing.

C. Issuance. A Certificate of Exemption will be issued by the State Tax Assessor to persons who have submitted an application and provided evidence that they are engaged in commercial agricultural production or commercial fishing. The Certificate of Exemption shall be effective for a maximum of two years from the date of issuance and may be used only by the person or persons named on the Certificate.

D. Exceptions. A Certificate of Exemption will not be issued to the following persons:

- i. Persons whose most recent filing under the United States Internal Revenue Code does not indicate that the person was engaged in commercial agricultural production or commercial fishing in the period covered by that filing; and
- ii. Persons whose application or whose most recent filing under the United States Internal Revenue Code indicates that the person is primarily engaged in a related but nonqualifying business activity.

Note: "Related but nonqualifying business activity" includes, but is not limited to, those activities excluded from the definitions of "commercial agricultural production" and "commercial fishing".

Notwithstanding these exceptions, purchases of machinery, equipment and repair parts used directly and primarily in commercial agricultural production or commercial fishing would qualify for refund.

E. Use restricted. The Certificate of Exemption may not be used to exempt the sale of the following items from sales tax:

- a) Items which are less than 100% depreciable under the United States Internal Revenue Code; and
- b) Items which are not commonly used directly in commercial agricultural production or commercial fishing including, but not limited to, lawn and garden tractors which are less than 20 horsepower, lag tractors, backhoe tractors, fork lift trucks and computers.

.03 Requirements of Seller.

Sellers are not required to obtain a copy of the exemption certificate for each individual sale. However, they must maintain a current copy of the exemption card and affidavit of exemption for their files to support exempt sales to persons engaged in commercial agricultural production or commercial fishing. Invoices of goods sold tax exempt under this rule must be appropriately marked to indicate that they are exempt sales. The words "Commercial Agricultural Exemption" or "Commercial Fishing Exemption" will satisfy this requirement.

The certificate must be taken in good faith. The good faith of the seller will be questioned if the seller has knowledge of fact which give rise to a reasonable inference that the purchaser is not the holder of the exemption certificate or that the goods are not used directly and primarily in commercial agricultural production or commercial fishing.

.04 Misuse of Exemption Certificates.

Misuse of exemption certificates will result in its cancellation, must be surrendered at the request of the State Tax Assessor and will be subject to prosecution.

AUTHORITY:36 M.R.S.A., Section 112.1

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